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Re: Agway, Inc.
Agway General Agency, Inc.
Brubaker Agronomic Consulting Service, LLC
Country Best Adams, LLC
Country Best-DeBerry, LLC
Feed Commodities International, LLC
Case No. 02-65872 Chapter 11 Jointly Administered

LETTER DECISION AND ORDER

On April 21, 2003, in response to a motion (“Compensation Motion”) filed on March 10, 2003, on behalf of Agway, Inc. (“Agway”) and certain of its direct and indirect subsidiaries (collectively, the “Debtors”), the Court issued a Decision ordering an evidentiary hearing on the Compensation Motion to be held on

Wednesday, May 7, 2003.¹ In the alternative, Agway was asked to submit an affidavit from a disinterested member of its Board of Directors setting forth the basis for the Board's decision to approve the compensation package under consideration by the Court. On May 2, 2003, the affidavit of Andrew Gilbert ("Gilbert")², sworn to that date ("Gilbert Affidavit"), was filed with the Court. As set forth in the Decision, the Court has received written acceptance of the Gilbert Affidavit from counsel for the Official Unsecured Creditors' Committee ("Committee"), the United States Trustee ("UST") and counsel for an unofficial committee comprised of Agway retiree ("Retirees"), making the evidentiary hearing unnecessary.³

As indicated in its Decision, the Court had certain concerns regarding whether the proposed compensation package had received approval by the Board of Directors and the basis for the Board's approval. At the time, the Court had only the recommendation of Agway's counsel and the Committee, as well as a description of the compensation program by Agway's chief executive officer ("CEO"), Michael R. Hopsicker ("Hopsicker").

The Court makes the following findings based on a review of the Gilbert Affidavit:

1. Agway's Board of Directors is comprised of ten outside directors who are farm-members of

¹ Memorandum-Decision, Findings of Fact, Conclusions of Law and Order, dated April 21, 2003.

² Gilbert indicates that he has been a member of Agway's Board since 1995 and currently serves as vice chairman of the Board, as well as chairman of the Board's Human Resources Management Committee. He is a farmer member of Agway and operates a 1,087 acre dairy farm in Potsdam, New York. He holds a Bachelor of Science degree from Cornell University and is a graduate of Cornell's Agricultural Leadership Institute.

³ The Court had given the parties, including the Retirees who had opposed the Compensation Motion, an opportunity to have an evidentiary hearing in order to cross-examine a disinterested member of Agway's Board of Directors. No one opted to take advantage of that opportunity.

Agway.⁴ None of the current directors have any financial stake in the proposed modifications to the existing compensation and benefit programs which are being considered by the Court. *See* Gilbert Affidavit at ¶ 4. “Many of the Board members are, however, unsecured creditors of the company as a result of having invested in Agway securities, and/or as a result of having deferred the payment of their directors’ fees. The unsecured claims of these directors range from less than \$10,000 to over \$300,000.” *Id.* at note 2.

2. Hopsicker, as CEO of Agway, is a member of the Board of Directors. Except for him, none of the other members of the Board are employees of Agway. *See* Exhibit A at C-1, attached to Gilbert Affidavit.
3. Hopsicker is responsible for “implementing the policies approved by the Board and for reporting all aspects of Agway’s operations to the Board.” *See* Gilbert Affidavit at ¶ 7.
4. It is the Human Resources Management Committee that has responsibility for (a) evaluating the performance of the CEO, and setting the CEO’s annual salary, incentive plan and performance objectives; (b) reviewing the compensation and incentive plans established by the CEO for executive management for each fiscal year; authorizing any incentive payouts under management incentive plans for the prior fiscal year; and (d) authorizing and amending major employee benefit programs from time to time. *See* Gilbert Affidavit at ¶ 8.
5. The Board reviewed and adopted or modified a series of compensation and benefit programs after consultation with the compensation and benefit consulting and design firm of Towers Perrin, attorneys at Weil, Gotshal & Manges, LLP and attorneys at Bond, Schoeneck & King, PLLC, for the purpose of striking “an appropriate balance between encouraging employees to stay as long as needed and avoiding needless expenditure of the company’s cash.” *See* Gilbert Affidavit at ¶¶ 10-11.
6. Under the compensation package for which approval is being sought, there are no new programs being added to those in existence on the date the bankruptcy cases were commenced. The compromise, which was negotiated by Hopsicker and the Committee, “affects the payments to be made to the employees under the existing programs but does not change the programs themselves. *See* Gilbert Affidavit at ¶ 14.

⁴ According to Agway’s “Board Manual”, “[f]rom the 2002 Annual Meeting until the 2003 Annual Meeting, there are 13 member directors, two other directors and the CEO. After the 2003 Annual Meeting, there are 12 member directors, two other directors and the CEO.” *See* Exhibit A at C-1, attached to Gilbert Affidavit. There is no explanation given for the discrepancy between Gilbert’s statement that there are 10 member directors and the 12 or 13 set forth in the Board Manual.

7. During the negotiation process, Agway's Board and the Human Resources Management Committee were provided with continual updates and received a requested analysis of the financial impact of the proposed compensation package. *See* Gilbert Affidavit at ¶¶ 15-16 and 19 (setting forth twelve separate occasions between October 25, 2002 and March 7, 2003 when the compensation and benefits programs and/or compromise were discussed).
8. The Compensation Motion presently under consideration by this Court had the full knowledge and approval of the Board and the Human Resources Management Committee. *See* Gilbert Affidavit at ¶ 21.

According to Mr. Gilbert,

[t]he Board and HR Committee were convinced, based on their review of independent compensation consultant reports, discussions with counsel and analysis of market data, that the various programs detailed herein, and the compromise reached with the Committee, provide an array of incentives that are calculated to enable Agway to retain its valued employees and ensure that they are compensated in a fair and reasonable manner. Moreover, the Board and Human Resources Management Committee believed that by approving the compromise, the likelihood of preserving or enhancing the going concern values for Agway's business units will be maximized.

See Gilbert Affidavit at ¶ 22.

Based on a review of the Gilbert Affidavit and recognizing the weight that is to be given to the actions and decisions of corporate directors, the Court finds that its concerns have been addressed and concludes that it will grant the Compensation Motion as being in the best business judgment of Agway.

IT IS SO ORDERED.

Dated at Utica, New York

this 9th day of May 2003

STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge